THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.21426 of 2007

Date: 27-11-2007

Between :-

K. Sarangapani .. Petitioner

And

The State Bank of Hyderabad
Rep.by Authorised Authority,
Zonal Office, Region-I,
Warangal and another ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.21426 of 2007

ORDER:-

Heard both the Counsel.

2. This Court issued *notice before admission* on 9-10-2007 and granted interim stay on condition of deposit of an amount of Rs.1,00,000/- (Rupees one lakh only) within a period of four weeks. It is stated that the conditional order had not been complied with.

3. The Writ Petition is filed for a Writ of Mandamus declaring the notice dated 5-7-2007 and possession notice dated 20-9-207 is illegal, arbitrary and violative of

principles of natural justice and consequently set aside the notices and direct the respondents to extend the time for further period of six months to settle the loan account and pass such other suitable orders.

4. It is stated that the petitioner had raised Housing Loan from the 2nd respondent in the year 2001 and also averred that the present Writ Petition is being filed aggrieved by the impugned notices dated 5-7-2007 issued under Section 13(2) of Securitisation and Reconstruction of Financial and Enforcement of Security Interest Act, 2002 (hereinafter in short would be referred to as 'the Act' for the purpose of convenience) and consequential possession notice dated 20-9-2007 issued under Section 13(4) of the said Act. Further it is stated that though the account of the petitioner is not Non Performing Asset (N.P.A.), still the 1st respondent has invoked the SARFAESI Act and further it is stated that the initiation of the said act is not automatic, but the Bank has invoked the said act, as such both the notices are illegal, arbitrary and contrary to record and violative of principles of natural justice. It is also stated that in the first notice dated 5-7-2007 issued under Section 13(2) of the said Act, the 1st respondent has raised a demand of Rs.3,90,746-64 ps., as on 18-6-2007 and also further

stated that thereafter, the petitioner got issued a legal notice dated 5-7-2007 seeking time for four months to avoid future complications to settle the account, however in the said legal notice, the petitioner had pointed out various issues with regard to the said transaction. It is also averred that instead of considering the petitioner's request for grant of time, 1st respondent had sent a reply dated 28-9-2007 rejecting his request for extension of time and also stated that no reasons are assigned in the said reply and further stated that the initiation of proceedings itself is not justifiable. Further it is stated that since it is a Mortgage transaction, no prejudice would be caused to the Bank if the time is extended instead of proceeding under the Act and further stated that the respondents without appreciating these facts, trying to proceed further in pursuance of impugned notices. Further it is stated that the initiation of proceedings under the Act by the respondents is illegal, arbitrary and violative of principles of natural justice and also averred that the petitioner had fairly offered to settle the account whereas the respondents are bent upon to proceed further. In such circumstances, the petitioner approached this Court for appropriate reliefs.

5. In the counter affidavit filed, it is stated that *at the*

request of the petitioner, the 2nd respondent Bank sanctioned housing loan of Rs.5,00,000/- on 21-10-2001 for construction of the house and also stated that to secure the repayment of the above said loan, the petitioner had executed the loan documents along with the guarantors and also averred that the petitioner also created mortgage by deposit of title deeds relating to the house property on 21-1-2001. It is also stated that the loan amount was repayable by the petitioner in monthly installments of Rs.7,500/- in a period of 120 months and also stated that from the beginning the petitioner was irregular in repaying the loan instalments and that therefore loan account of the petitioner was classified as non-performing asset and initiated recovery proceedings under the Act. It is also stated that the respondent Bank has issued the notice dt.5-7-2007 under Section 13(2) of the Act demanding the petitioner to pay the amount due of Rs.3,90,746.64 ps., as on 18-6-2007 and further interest within 60 days from the date of the receipt of the notice and that in response to the said demand notice, the petitioner sent a representation dt.6-9-2007 making untenable allegations. In reply to the said representation, this respondent Bank sent letter dt.13-9-2007 under Section 13(3A) of the Act denying the allegations made by

the petitioner and informed to make the payment of the amount due as demanded, failing which the respondent Bank will be constrained to proceed further under the Act. It is also stated that as the petitioner and guarantor failed to pay the amount within the stipulated time, the respondent Bank issued possession notice dt.20-9-2007 under Section 13(4) of the Act and took possession of the mortgaged property. After receiving the possession notice, the petitioner again sent letter dt.24-9-2007 without making any payment to the respondent Bank and filed this Writ Petition with false and baseless allegations inspite of the replies given by the Bank. It is further averred that the petitioner had not repaid the amount due as agreed upon and the respondent Bank has taken measures under the Act in accordance with the law. It is also stated that if the petitioner is aggrieved by any of the measures taken by the respondent Bank, he has the remedy under Section 17 of the Act to approach the Debt Recovery Tribunal. To avoid the payment of the Court fee stamp, the petitioner had approached this Court with baseless allegations and obtained the interim orders on 9-10-2007 and that this Court granted interim orders and directed the petitioner to pay Rs.1,00,000/- within a period of four weeks. The petitioner failed to comply with the said orders and hence the stay granted by this Court automatically stood

vacated. This clearly shows that the petitioner has not approached this Court with clean hands. In the facts and circumstances, it is stated that that the Writ Petition being devoid of merit, the same is liable to be dismissed.

6. In the light of the respective stands taken by the parties, this Court does not see any serious procedural legal infirmity as such. Even otherwise, the petitioner is having a remedy under Section 17 of the Act aforesaid. In the light of the same, let the petitioner avail the effective alternative remedy under Section 17 of the Act aforesaid.

7. With the above directions, the Writ Petition is hereby dismissed. No order as to costs.

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Justice P.S.Narayana

27th November, 2007

smr